

FINAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968

As required by Section 11346.2 of the Government Code, the Commissioner of Corporations (“Commissioner”) sets forth below the reasons for the amendments to Section 260.121 of the California Code of Regulations (10 C.C.R. Section 260.121).

Under the Corporate Securities Law of 1968, it is unlawful for any person to offer or sell a security in the State of California in an issuer transaction unless such sale has been qualified or is exempt or not subject to qualification. It is also unlawful for any person to offer or sell any security in an “entity conversion transaction” unless the security is qualified or exempt. (Cal. Corp. Code Section 25120). In order to qualify a security, an application for qualification must comply with Corporations Code Section 25121 and regulations promulgated thereunder. The application must include the facing page set forth in Section 260.110 as well as the form required by Section 260.121. However, Section 260.121 is limited to a transaction involving a merger, consolidation, or purchase of corporate assets, and does not include entity conversion transactions. The Commissioner proposes to amend the qualification application form in Section 260.121 to include entity conversion transactions, and to make technical, clarifying changes.

Section 260.121: The proposed amendments to Section 260.121 amend the application for qualification form to include securities issued in an entity conversion transaction.

Recent legislative enactments necessitate amending Section 260.121 to specifically include entity conversion transactions in the application for qualification. In 1999, the Legislature enacted AB 197 (Ackerman, Chapter 250, Statutes of 1999) to permit the conversion of partnerships and limited liability companies to other types of business entities and AB 198 (Ackerman, Chapter 437, Statutes of 1999) to permit the merger of California corporations with other types of business entities. AB 1894 (Ackerman, Chapter 201, Statutes of 2000) was a follow-up bill that clarified the conversion and merger bills of the previous year. AB 1894 added Corporations Code Section 25005.1 to define an “entity conversion transaction.” In addition, AB 1894 amended Corporations Code Section 25120 to prohibit any person from offering or selling any security in an “entity conversion transaction” unless the transaction is qualified or exempt.

Because of the legislative amendments, the proposal to amend the current application for qualification is necessary to ensure that the Department has the most up-to-date forms to accommodate those who seek to qualify securities, including securities issued in an entity conversion transaction, for sale in California.

Clarifying changes were also made to Section 260.121 to update the form for entities that may not be organized as a corporation. Other types of entities, such as limited liability companies or limited partnerships, may also, and do, use the form to qualify securities with the Department.

ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business than the adopted regulations.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ADDENDUM REGARDING PUBLIC COMMENTS

No written comments were received during the 45-public comment period which ended on November 1, 2004.

No requests for hearing were received. No public hearing was scheduled or heard.

Although, there were no changes to the proposed regulations due to any public comments, the Department made minor grammatical and similar conforming changes to ensure consistency with the existing statutes and rules. The reference throughout the rule to "officer" was amended to "executive officer" to clarify that only the upper level of officers were to be included and not everyone with a title of "officer." Consequently, on July 18, 2005 these proposed regulations were sent for an additional 15-day comment period. There were no comments received during the 15-day comment period which ended on August 3, 2005. No additional changes were made to these regulations subsequent to the 15-day public comment period.

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